

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

AITHENT, INC.,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	11-0173-CV-W-GAF
THE NATIONAL ASSOCIATION)	
of INSURANCE COMMISSIONERS,)	
)	
Defendant.)	

VIDEOTAPED DEPOSITION OF JULIENNE L. FRITZ

VOLUME 2

TAKEN BY MR. PETER GALLAGHER

ON BEHALF OF THE PLAINTIFF

OCTOBER 19, 2012

9:35 a.m.

REPORTED BY NAOLA C. VAUGHN
REGISTERED PROFESSIONAL REPORTER
CERTIFIED COURT REPORTER (MO #1052)
CERTIFIED REALTIME REPORTER
JOB # 377488

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3	Plaintiff,)	
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7	THE NATIONAL ASSOCIATION)	
8	of INSURANCE COMMISSIONERS,)	
9)	
10	Defendant.)	

VIDEOTAPED DEPOSITION OF JULIENNE L. FRITZ,
Volume 2, produced, sworn, and examined on Thursday,
the 19th day of October, 2012, at the offices of Husch
Blackwell, LLP, 4801 Main Street, Suite 1000, in the
City of Kansas City, State of Missouri, before
Naola C. Vaughn, Registered Professional Reporter,
Certified Realtime Reporter and Certified Court
Reporter within and for the State of Missouri.

A P P E A R A N C E S:

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Beth Hargarten, NAIC
Jim Ross, videographer

COURT REPORTER:

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1 MR. SIMON: Objection, mischaracterizes
2 all the prior testimony.

3 A. That would result in less revenue being
4 generated for the NAIC and reflected in the SBS
5 department.

6 MR. GALLAGHER: Okay. Thanks. I think
7 we should take a break.

8 THE VIDEOGRAPHER: Okay. This ends tape
9 No. 2. It is 11:42 a.m. We're off the record.

10 (A recess was taken.)

11 (Exhibits 121 through 125 marked.)

12 THE VIDEOGRAPHER: Beginning of tape
13 No. 3. It is 11:58 a.m. We're back on the record.

14 Q. BY MR. GALLAGHER: Is it true,
15 Ms. Fritz, that NAIC and NIPR each earn twice as
16 much when a transaction does not go through SBS as
17 they do when the transaction does go through SBS?

18 A. No.

19 Q. Okay. Let me show you a document which
20 we've marked as Exhibit 121, please.

21 Can I ask you please to look at the
22 email that starts on page 3 of the document.

23 A. Okay.

24 Q. And that is -- this is an email from
25 Brady Kelley to Greta Roberts and Ron Goodwin from

1 July of 2009; is that right?

2 A. Yes.

3 Q. And was Mr. Kelley an NAIC employee in
4 2009?

5 A. Yes.

6 Q. What was his title?

7 A. Chief financial officer -- no. Chief
8 business strategy and chief financial officer, I
9 believe.

10 Q. Am I correct that the subject line of
11 the email is "SBS Revenue Sharing"?

12 A. Yes.

13 Q. And am I correct that on page 4 he
14 writes, "Here's a quick summary of how this should
15 work"?

16 A. Yes.

17 Q. He says that "NIPR transaction to
18 non-SBS state"?

19 A. Yes.

20 Q. "70 percent of the gross revenue goes to
21 NIPR; 30 percent goes to NAIC"; is that right?

22 A. Yes.

23 Q. And then he writes that, "NIPR
24 transaction to an SBS state, 50 percent of gross
25 revenue to Aithent, 35 to NIPR, 15 percent to NAIC,"

1 right?

2 A. Yes.

3 Q. Was he wrong about these figures?

4 A. No.

5 Q. Don't -- doesn't this show that NAIC and
6 NIPR each earn twice as much when a transaction does
7 not go through SBS?

8 A. That wasn't your question.

9 Q. Oh.

10 A. I don't believe.

11 Q. Okay. Well, let me ask it to you now.

12 Isn't it true that NAIC and NIPR each
13 earn twice as much when a transaction does not go
14 through SBS as they do when the transaction does go
15 through SBS?

16 A. Okay. That was your question before --

17 Q. Okay.

18 A. -- and that's what I answered no to.

19 Q. Okay.

20 A. So what this says is, if there's an NIPR
21 transaction that comes through and it's for a
22 non-SBS state, yes, NIPR earns 70 percent. NAIC
23 earns 30 percent. If it's an NIPR transaction and
24 there isn't --

25 (Reporter asked for clarification.)

1 A. If it is an NIPR transaction for a
2 non-SBS state, 70 percent of the gross revenue goes
3 to NIPR and 30 percent goes to the NAIC.

4 If it's an NIPR transaction and there is
5 an SBS -- and it's for an SBS state, then 50 percent
6 of the gross revenue to Aithent -- goes to Aithent
7 and 35 percent goes to NIPR and 15 percent goes to
8 the NAIC. Okay.

9 So in that scenario, if it's an NIPR
10 transaction and you're comparing a non-SBS state and
11 an SBS state, yes, it is true that the NIPR and NAIC
12 earn twice as much, if it's not an SBS state and a
13 transaction goes through NIPR.

14 Q. Thank you.

15 A. That was not your question.

16 Q. Let me show you a different document
17 which I believe we have also premarked. This is
18 Exhibit 122.

19 MR. SIMON: Thank you.

20 Q. BY MR. GALLAGHER: Am I correct that
21 these are NAIC's answers to interrogatories that
22 Aithent served on NAIC in the context of this case?

23 A. First supplemental answers, yes.

24 Q. And am I correct that you swore under
25 oath that the contents of this document are

1 off after five years -- five years after its
2 implementation. This would represent transactions
3 for the full-time period here, 2006 to 2011, and not
4 take into consideration that rolloff.

5 Q. How would the figure change, if you did
6 take that into consideration?

7 A. It would go down, but I don't know by
8 how much.

9 Q. Could you figure that out?

10 A. No.

11 Q. Why not?

12 A. We don't have the information to
13 calculate that.

14 Q. So neither NAIC nor NIPR has that
15 information?

16 MR. SIMON: Objection, lacks foundation,
17 calls for speculation.

18 A. I don't know.

19 Q. BY MR. GALLAGHER: So is it your
20 testimony that it's impossible for NAIC to determine
21 how the figure would change, taking into account
22 this rollout, I think you referred to it?

23 MR. SIMON: Objection, mischaracterizes
24 her testimony. And we'll stipulate that nothing is
25 impossible.

1 A. The NAIC does not have the information
2 necessary to provide that to you.

3 MR. GALLAGHER: Okay. I will ask that
4 you, NAIC, that is, update this figure so that it's
5 inclusive of the life of the contract, which is
6 through July 5th -- excuse me, 15th of 2012.

7 Let's take a quick break.

8 THE VIDEOGRAPHER: This ends tape No. 5.
9 It is 3:15 p.m., and we're off record.

10 (A recess was taken.)

11 THE VIDEOGRAPHER: Beginning of tape
12 No. 5, it's 3:27 p.m. We're back on the record.

13 Q. BY MR. GALLAGHER: Okay. If I could
14 show you, please, Ms. Fritz, a document which we've
15 marked as Plaintiff's Exhibit 133.

16 MR. SIMON: Thank you.

17 Q. BY MR. GALLAGHER: I'm just going to ask
18 you about one page.

19 A. Okay.

20 Q. Take as much time as you want, but I
21 just want to establish, this is the -- first of all,
22 this is the NAIC's response to a document request
23 that we served on NAIC, and if I could just ask you
24 to turn to the last page of the document, please.

25 Do you see where the top half of the

1 foundation.

2 A. I would say that they do not apply and
3 there would not be a way to calculate any potential
4 revenue share based on the terms of the agreement.

5 Q. BY MR. GALLAGHER: So I'm really not
6 arguing with you. I just want to understand.

7 Is it your testimony that it would be
8 impossible for NAIC to determine what would be owed
9 to Aithent for any of these transactions or just for
10 some of them?

11 MR. SIMON: Objection, lacks foundation,
12 calls for speculation.

13 A. I don't believe that we could, based on
14 the structure of the agreement and the obligations
15 under the agreement, with the exception of one that
16 is non-resident adjustor licensing, and Aithent was
17 paid for non-resident adjustor licensing. It was
18 reported under the NRL category.

19 Q. BY MR. GALLAGHER: But remember, I'm not
20 getting into whether -- your viewpoint of whether
21 Aithent really is owed for these transactions or
22 not. That's not where I'm coming from.

23 My question is just based on the
24 information that NAIC has, would it be possible for
25 NAIC to calculate what Aithent would be owed, if